IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.,)
Plaintiffs,)
v.) Case No. 4:05-cv-00329-TCK-SAJ
TYSON FOODS, INC., et al.,)
Defendants.)

TYSON FOODS, INC.'S MOTION TO AMEND ITS MOTION TO DISMISS COUNTS 4-10 OF THE FIRST AMENDED COMPLAINT

Pursuant to Federal Rule of Civil Procedure 7(b) and Local Rule of Civil Procedure 7.2(k), Defendant Tyson Foods, Inc., joined by Defendants Tyson Poultry, Inc., Tyson Chicken, Inc., and Cobb-Vantress, Inc., (the "Tyson Defendants") respectfully move to amend the previously-filed *Motion to Dismiss Counts 4-10 of the First Amended Complaint and Integrated Opening Brief in Support* (Docket No. 66) ("Original Motion to Dismiss") by filing the amended motion attached as Exhibit A. The purpose of doing so is to eliminate one of three grounds for requested relief without prejudice, in the interest of judicial economy, as described below.

The Original Motion to Dismiss advanced three bases for dismissal: (1) the Clean Water Act's regulation of point and non-point sources preempts Oklahoma state law on claims of interstate water pollution (found at pages 4-15); (2) Oklahoma's claims violate the Commerce Clause and the sovereignty of Arkansas (pages 15-21); and (3) Oklahoma's federal common law nuisance claim has been displaced by the Clean Water Act (pages 21-22). The Tyson Defendants seek to voluntarily withdraw without prejudice the Clean Water Act nonpoint source preemption argument advanced in their Original Motion to Dismiss. The Tyson Defendants continue to assert the remaining arguments in the Original Motion to Dismiss, including that

Oklahoma's claims violate the Commerce Clause and Arkansas' sovereignty and that the Clean Water Act has displaced any federal common law that could support Oklahoma's claims.

For the convenience of the Court, the Tyson Defendants attach their proposed Amended Motion to Dismiss Counts 4-10 of the First Amended Complaint and Integrated Opening Brief in Support. In the amended motion, the Tyson Defendants have deleted the withdrawn Clean Water Act argument, leaving the latter arguments substantively unchanged. To provide background information for the federal common law nuisance argument, the Tyson Defendants have included a discussion of Clean Water Act principles that retains some material from the Original Motion to Dismiss. They have not, however, added any substantive arguments to the amended motion. Accordingly, the amended motion contains no new material requiring further briefing by the parties. Pursuant to Local Rule 7.2(k), the Tyson Defendants have asked Plaintiffs' counsel whether they consent to this motion, but as of January 22 have not received a definitive response.

For the foregoing reasons, the Tyson Defendants respectfully request that the motion be granted and that the clerk be directed to strike the Original Motion to Dismiss (Docket No. 66) and to file the amended motion, attached hereto. Pursuant to Local Rule 7.2(k), a proposed order is attached as Exhibit B.

Dated: January 22, 2007

Respectfully submitted,

/s/ Jay T. Jorgensen

Thomas C. Green, appearing pro hac vice Mark D. Hopson, appearing pro hac vice Timothy K. Webster, appearing pro hac vice Jay T. Jorgensen, appearing pro hac vice SIDLEY AUSTIN BROWN & WOOD LLP 1501 K Street, NW Washington, DC 20005-1401 (202) 736-8000 (phone) (202) 736-8711 (fax)

-AND-

Patrick M. Ryan, OBA # 7864 Stephen L. Jantzen, OBA # 16247 RYAN, WHALEY & COLDIRON, P.C. 900 Robinson Renaissance 119 North Robinson, Suite 900 Oklahoma City, OK 73102 (405) 239-6040 (phone) (405) 239-6766 (fax)

-AND-

Robert W. George, OBA #18562 KUTAK ROCK LLP The Three Sisters Building 214 West Dickson Street Fayetteville, AR 72701-5221 (479) 973-4200 (phone) (479) 973-0007 (fax)

Attorneys for Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc. and Cobb-Vantress, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of January 2007, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

W. A. Drew Edmondson
OFFICE OF ATTORNEY GENERAL
State of Oklahoma
2300 N. Lincoln Blvd, Suite 112
Oklahoma City, OK 73105
ATTORNEY FOR PLAINTIFF

David Phillip Page
James Randall Miller
Louis Werner Bullock
MILLER KEFFER & BULLOCK
222 S KENOSHA
TULSA, OK 74120-2421
ATTORNEYS FOR PLAINTIFF

Douglas Allen Wilson Melvin David Riggs Richard T. Garren Sharon K. Weaver RIGGS ABNEY NEAL TURPEN ORBISON & LEWIS 502 W 6th St Tulsa, OK 74119-1010 Robert Allen Nance Dorothy Sharon Gentry RIGGS ABNEY NEAL TURPEN ORBISON & LEWIS 5801 N Broadway Ste 101 Oklahoma City, OK 73118 ATTORNEYS FOR PLAINTIFF

ATTORNEYS FOR PLAINTIFF

A. Scott McDaniel Chris A. Paul Nicole M. Longwell Philip D. Hixon Martin A. Brown JOYCE, PAUL & MCDANIEL, P.C. 1717 South Boulder Ave., Ste 200 Tulsa, OK 74119 ATTORNEYS FOR PETERSON Theresa Noble Hill
John H. Tucker
RHODES, HIERONYMUS, JONES,
TUCKER & GABLE
POB 21100
100 W. 5th Street, Suite 400
Tulsa, OK 74121-1100
ATTORNEYS FOR CARGILL, INC.,
and CARGILL TURKEY
PRODUCTION, INC.

R. Thomas Lay, Esq. KERR, IRVINE, RHODES & ABLES 201 Robert S. Kerr Ave., Suite 600 Oklahoma City, OK 73102 ATTORNEYS FOR WILLOW

BROOK FOODS, INC.

FARMS, INC.

and I further certify that a true and correct copy of the above and foregoing will be mailed via regular mail through the United States Postal Service, postage properly paid, on the following who are not registered participants of the ECF System:

William H. Narwold **MOTLEY RICE LLC** 20 Church St., 17th Floor Hartford, CT 06103 **ATTORNEYS FOR PLAINTIFF** Elizabeth C Ward Frederick C. Baker MOTLEY RICE LLC 28 Bridgeside Blvd Mount Pleasant, SC 29464 ATTORNEYS FOR PLAINTIFF

C. Miles Tolbert
SECRETARY OF THE
ENVIRONMENT
State of Oklahoma
3800 North Classen
Oklahoma City, OK 73118

/s/ Jay T. Jorgensen JAY T. JORGENSEN